

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCE - W/S York Road, 695' NW of the c/l of Melancthon Avenue (1626 York Road) 8th Election District 3rd Councilmanic District James Enterprises Petitioner

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a special exception to permit a service garage in a B.L. zone and variances to permit 14 parking spaces in lieu of the required 15 and a parking space setback of 4 feet from an existing road right-of-way in lieu of the required 10 feet, all as more particularly described in Petitioner's Exhibit 1.

The Petitioner, by M. William Furman, General Partner, appeared and testified. Also appearing on behalf of the Petitions were Paul Lee, Registered Professional Engineer, and Robert A. Peck on behalf of Speedy Muffler, Inc. Lester C. Wilbur, Jr. appeared as a Protestant.

Testimony indicated that the subject property, known as 1626 York Road, consists of 0.30 acres zoned B.L. and is improved with a warehouse building. Mr. Furman testified the existing building was constructed in the 1950s and was used as an auto parts store until recently when it was used as storage space for a hot tub vendor. The property is presently vacant. Testimony indicated that Mr. Furman has entered into a contract to lease the subject property to Speedy Muffler Car Care for a service garage with six bays. Mr. Furman testified there will be no significant exterior changes to the existing building; only the interior will be modified to accommodate the six bays proposed. Testimony indicated that the Petitioner would suffer an undue hardship and practical difficulty should

the requested variances be denied.

Mr. Wilbur testified on behalf of the York Manor Improvement Association. The Association is not generally opposed to the relief requested provided certain conditions regarding landscaping and parking, as set forth in Protestant's Exhibit 1, are met. After discussion between the Petitioners and Mr. Wilbur, an agreement was reached between both parties to resolve the concerns of the Association.

It is clear that the B.C.Z.R. permits the use proposed by a B.L. zone by special exception. It is equally clear that the proposed use would not be detrimental to the primary uses in the vicinity. Therefore, it must be determined if the conditions as delineated in Section 502.1 are satisfied.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1 of the B.C.Z.R. The Petitioner has shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. *Schultz v. Pritts*, 432 A.2d 1319 (1981).

The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the B.C.Z.R.

After reviewing all of the testimony and evidence presented, it appears that the special exception should be granted with certain restrictions as more fully described below.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. *McLean v. Solay*, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

*Anderson v. Bd. of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28 (1974).

It is clear from the testimony that if the variances are granted, such use as proposed would not be contrary to the spirit of the B.C.Z.R. and would not result in substantial detriment to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons given above, the relief requested in the Petitions for Special Exception and Zoning Variance should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 28th day of February, 1990 that the Petition for Special Exception to permit a service garage in a B.L. zone and the Petition

for Zoning Variance to permit 14 parking spaces in lieu of the required 15 and a parking space setback of 4 feet from an existing road right-of-way in lieu of the required 10 feet, in accordance with Petitioner's Exhibit 1, be and are hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted:

- 1) The Petitioner may apply for its building permit and may be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
- 2) The special exception granted herein is limited to the operation of a Speedy Muffler Car Care Center. There shall be no body and/or fender work performed on the premises.
- 3) Prior to the issuance of any occupancy permits, Petitioner shall comply with all Zoning Plans Advisory Committee comments, including, but not limited to, the Office of Planning comments dated September 25, 1989.
- 4) Prior to the issuance of any occupancy permits, Petitioner shall landscape the subject property at a minimum in accordance with that depicted in Petitioner's Exhibit 1.
- 5) Petitioner shall submit for review and approval by the Deputy Director of Planning an architectural rendering of the subject property and improvements thereon. A copy of the approved plan shall be submitted to the Zoning Commissioner for final approval prior to the issuance of any occupancy permits.
- 6) There shall be no damaged or disabled vehicles stored on the premises.
- 7) Upon request and reasonable notice, Petitioners shall permit a representative of the Zoning Enforcement Division to make an inspection of the subject property to insure compliance with this Order.

J. Robert Haines  
Zoning Commissioner  
for Baltimore County

JRH:bjs

- 4 -

PETITION FOR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for a service garage in a B.L. zone.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:

Legal Owner(s):

James Enterprises

(Type or Print Name)

(Type or Print Name)

Signature

Signature M. William Furman

Address

(Type or Print Name)

City and State

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**Lutherville Community Association**  
P.O. Box 6  
Lutherville, Maryland 21093

September 20, 1989

**RECEIVED**  
SEP 22 1989

**ZONING OFFICE**

Mr. J. Robert Haines,  
Zoning Commissioner of Baltimore County  
111 West Chesapeake Avenue  
Towson, Maryland 21204

In re: Case #90-122-XA

Dear Mr. Haines:

In order to shield the residents on Division (and Middle) Avenues, Lutherville, from the noise and sight of the proposed service garage at 1626 York Road, Lutherville, we request that any special exception granted for that address require that the existing trees and shrubs in the rear of the 1626 York Road lot be preserved and maintained. (If trees die, they should be replaced.) No one should be subjected to a service garage in his living room. Thank you.

Yours truly,

*Arlene D. Bowers*

Dr. Arlene D. Bowers,  
Chairman, Zoning Committee

**Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
(301) 887-3353**

J. Robert Haines  
Zoning Commissioner

DATE 9/12/89



Dennis F. Rasmussen  
County Executive

James Enterprises  
3625 Antioch Road  
Baltimore, Maryland 21208

ATTN: M. WILLIAM FURMAN

Re: Petition for Special Exception & Zoning Variance  
CASE NUMBER: 90-122-XA  
W/S of York Rd. # 595' NW of c/l of Melancton Avenue  
1626 York Road  
8th Election District - 3rd Councilmanic  
Petitioner(s): James Enterprises  
HEARING SCHEDULED: WEDNESDAY, OCTOBER 4, 1989 at 9:30 a.m.

Gentlemen:

Please be advised that \$ 154.81 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please make your check payable to Baltimore County, Maryland. Bring the check and the sign & post set(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland 21204, fifteen minutes before your hearing is scheduled to begin.

If you fail to return the sign & post set(s), there will be a charge for each such set.

**BALTIMORE COUNTY, MARYLAND**  
OFFICE OF FINANCE, REVENUE & DIVISION  
MISCELLANEOUS CASH RECEIPT  
No. 077314  
DATE 10/4/89 ACCOUNT 90-122-000  
AMOUNT 154.81  
RECEIVED FROM James Enterprises  
FOR P.A. 10/4/89 Hearing 90-122-XA  
B 014\*\*\*\*\*15481\* 9048F

IN THE MATTER OF:  
JAMES ENTERPRISES  
LOCATION:  
1626 YORK ROAD

BEFORE THE  
ZONING COMMISSIONER  
OF BALTIMORE COUNTY  
ITEM NO.: 580

Mr. Commissioner:

Please enter my appearance on behalf of the Petitioner, JAMES ENTERPRISES, with reference to the above captioned matter above as counsel for the Petitioner.

*S. Eric DiNenna*  
S. ERIC DINENNA  
DINENNA, MANN & BRESCHI  
P.O. Box 10508  
Towson, Maryland 21285-0508  
(301) 296-6820

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 25 day of July, 1989, a copy of the foregoing Pleading was mailed, postage prepaid to Mr. Robert A. Peck, 130 Brandon Road, Hendersonville, North Carolina, 28739, and to the People's Counsel, County Office Building, Towson, Maryland 21204.

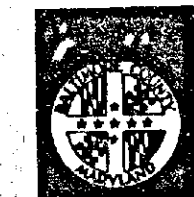
*S. Eric DiNenna*  
S. ERIC DINENNA

- 1 -

**Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
(301) 887-3353**

J. Robert Haines  
Zoning Commissioner

September 1, 1989



Dennis F. Rasmussen  
County Executive

S. Eric DiNenna, Esq.  
P.O. Box 10508  
Towson, Maryland 21285-0508

Re: Case Number: 90-122-XA  
James Enterprises, Petitioner

Dear Mr. DiNenna:

This to acknowledge yours of August 29, 1989, in which you outlay your scheduling problems.

Please be advised that the Commissioner will hold the start of the instant hearing up to 10:00 o'clock the morning of October 4, 1989. Due to the complexity of the other cases on the docket that day, the case cannot start past the hour. In the event you are unable to arrive for the hearing by 10:00 a.m., this will not be logged as a "Failure to Appear", as we will then consider your letter of August 29, 1989 a postponement request, enabling the matter to simply be reset.

Very truly yours,

*S. J. Stephens*  
S. J. Stephens  
Hearing Desk  
(301) 887-3351

GGG:gs

**CERTIFICATE OF PUBLICATION**

TOWSON, MD., Sept 7, 1989

THIS IS TO CERTIFY, that the annexed advertisement was published in TOWSON TIMES, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Sept 7, 1989.

THE JEFFERSONIAN  
TOWSON TIMES,

*S. Zake Olson*  
Publisher

PO 16317  
NY 134175  
CO 90-122-XA  
PRD 9 104.81

DINENNA, MANN & BRESCHI  
ATTORNEYS AT LAW  
AUG 30 1989

**ZONING OFFICE**

August 29, 1989

RE: Case No.: 90-122XA  
James Enterprises, Petitioner

Zoning Commissioner for  
Baltimore County  
County Office Building  
Towson, Maryland 21204

Dear Mr. Commissioner:

I am in receipt of a Notice of Hearing concerning the above-captioned matter set for October 4, 1989, at 9:30 a.m..

This is to advise you that I recently received notification of a continued hearing before the County Board of Appeals on that same date but at 9:00 a.m.. One hour has been set aside before the Board to complete that case.

I am not asking for a postponement of the matter before you, but wish to advise you that I might be approximately one-half hour late and if it is agreeable with you, the hearing concerning the above-captioned matter can start at 10:00 a.m..

Please advise me.

Very truly yours,

*S. Eric DiNenna*  
S. ERIC DINENNA

SED:cjc

**Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
(301) 887-3353**

J. Robert Haines  
Zoning Commissioner

August 18, 1989



Dennis F. Rasmussen  
County Executive

**NOTICE OF HEARING**

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 103 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Special Exception & Zoning Variance  
CASE NUMBER: 90-122-XA  
W/S of York Road, 595' NW of c/l of Melancton Avenue  
1626 York Road  
8th Election District - 3rd Councilmanic  
Petitioner(s): James Enterprises  
HEARING SCHEDULED: WEDNESDAY, OCTOBER 4, 1989 at 9:30 a.m.

Special Exceptions for a service garage.  
Variances to permit 14 parking spaces in lieu of the required 15 and to permit a 0 foot setback for parking space from existing road right-of-way in lieu of the required 10 feet (a variance of 10 feet).

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

*J. Robert Haines*  
J. ROBERT HAINES  
ZONING COMMISSIONER  
BALTIMORE COUNTY, MARYLAND

JRH:gs  
cc: James Enterprises  
File  
S. Eric DiNenna, Esq.

DINENNA, MANN & BRESCHI  
ATTORNEYS AT LAW

P.O. BOX 10508  
TOWSON, MARYLAND 21285-0508  
SUITE 600  
MERCANTILE-TOWSON BUILDING  
409 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(301) 296-6820  
TELEFAX (301) 296-6884

September 28, 1989

Zoning Commission of  
Baltimore County  
County Office Building  
Towson, Maryland 21204

ATTN: Gwen

RE: Case No.: 90-122-XA  
James Enterprises, Petitioner

Dear Gwen:

This is to confirm my conversation with you on Wednesday, September 27, 1989, that I informed you that the signs that were posted are no longer on the above-captioned property.

I indicated to you that the owners of the property called me and indicated that the signs were gone.

You stated that you would have them redone and the property reported.

Thank you for your cooperation.

Very truly yours,

*S. Eric DiNenna*  
S. ERIC DINENNA

SED:cjc  
cc: Stanley Fine, Esquire  
Mr. Robert A. Peck

**RECEIVED**  
SEP 29 1989

**ZONING OFFICE**

**CERTIFICATE OF POSTING**  
ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District 8th Date of Posting September 8, 1989  
Posted for: Special Exception - Variance  
Petitioner: James Enterprises  
Location of property: W/S of York Road, 595' NW of c/l of Melancton Avenue  
Address: 1626 York Road  
Location of Sign: West side of York Road, in front of subject property  
Remarks: Signs replaced - REPLACED 9-22-89  
Posted by: S.J. Stephens Date of return: September 19, 1989  
Number of Signs: 2





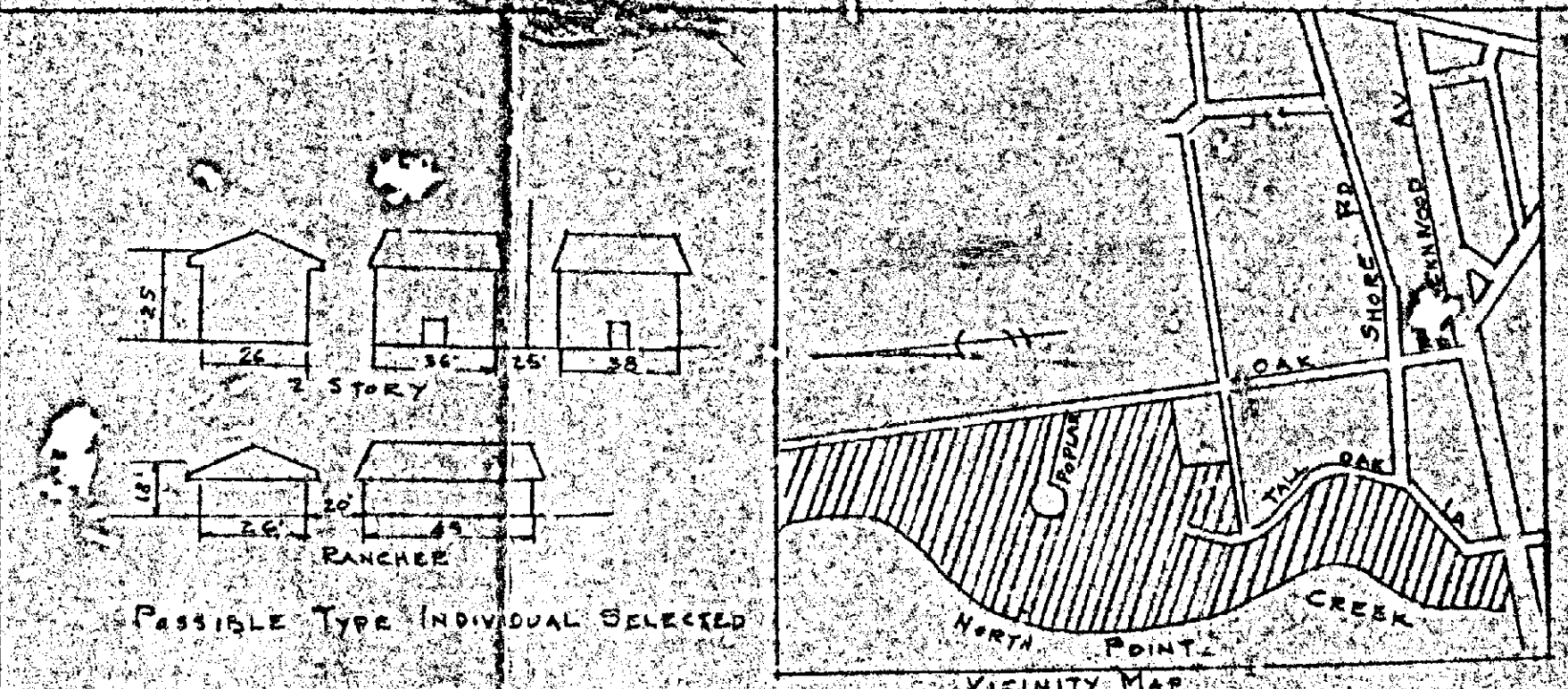












**Notes**

1. ALL EXISTING DWELLINGS ON THIS TRACT ARE TO BE DEMOLISHED.
2. ALL LOTS SHALL BE 10' WIDE.
3. ALL AREAS NOTED TO BE NOT IMPROVED FOR.
4. ALL LOTS ARE TO BE 10' WIDE.
5. ON PAUHANDE LOT, REMOVAL OF EXISTING HOUSE AND REMOVAL OF PAUHANDE LOT SPECIFICALLY NOTED TO BE NOT IMPROVED FOR.
6. OPEN SPACE TO BE PROVIDED TO THE DEPT. OF RECREATION.
7. HOUSES OUTSIDE R.T.A. TO BE 10' APART IF TAKING WINDOWS.
8. ANY WATER FRONT CONSTRUCTION TO BE AS PER ZONING REGULATIONS.
9. TRAFFIC DATA TO BE PROVIDED TO THE DEPT. OF TRANSPORTATION.
10. ROLL COAST TO BE 10' WIDE.
11. TALL OAK LAND TO BE 10' WIDE.
12. TOP OF ROAD TO BE 10' WIDE.
13. SHORE ROAD TO BE 10' WIDE.

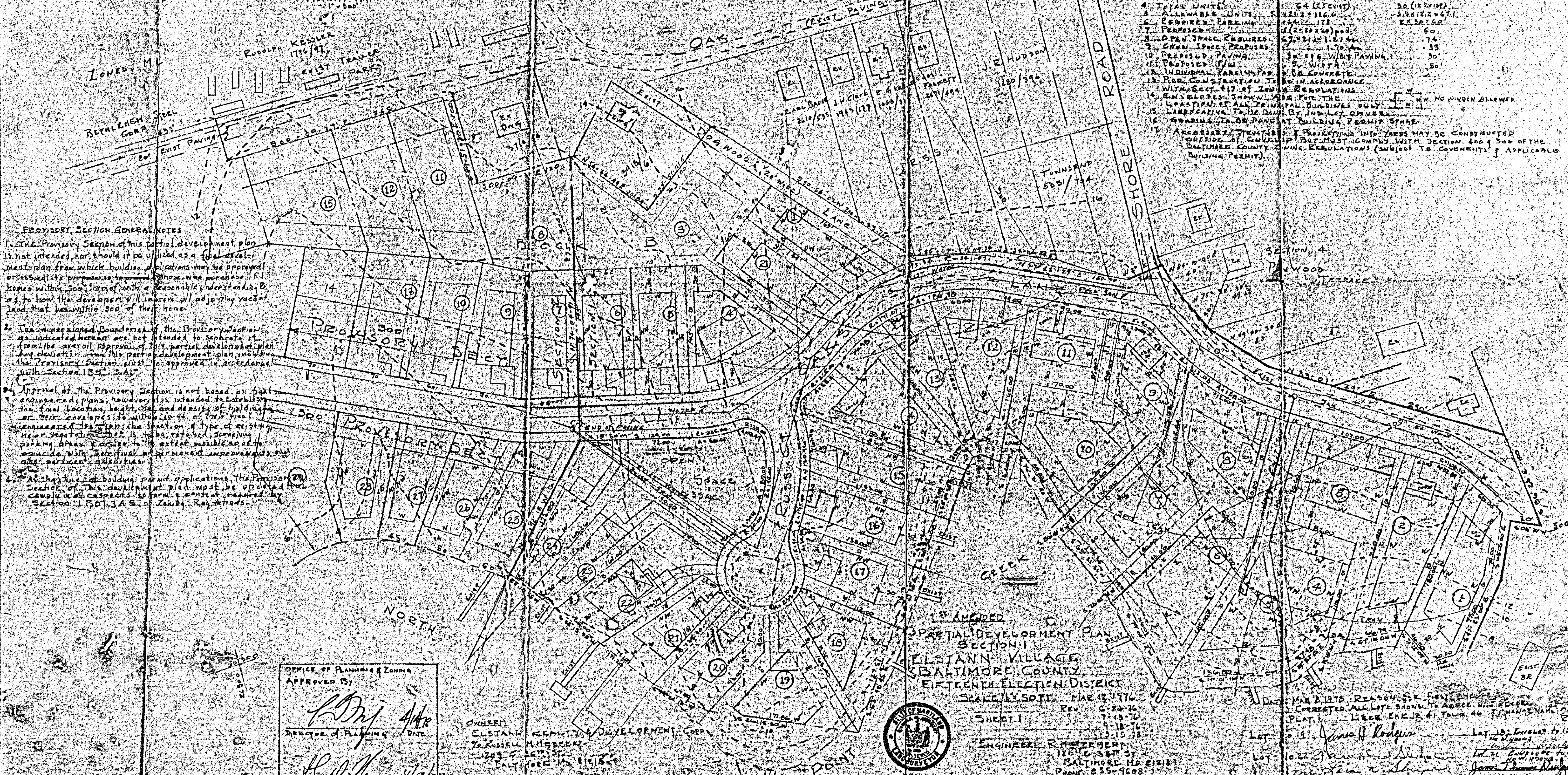
**DATA**

DATA	SECTION I	SECTION 4
1. TOTAL TRACT AREA	21.46	15.2
2. NET AREA	21.1	10.05
3. EXIST. ZONING	DR. 3.5	DR. 3.5
4. TOTAL UNITS	64 (55% RENT)	30 (100% RENT)
5. ALLOWABLE UNITS	52 (45% RENT)	25 (100% RENT)
6. PERMITTED PARKING	124 (1.25 PER 100)	50 (1.25 PER 100)
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**SECTION 4**

**PROVISIONAL SECTION GENERAL NOTES**

1. THE PROVISIONAL SECTION OF THIS DEVELOPMENT PLAN is not intended nor should it be used as a final development plan from which building applications may be prepared or issued. Its purpose is to provide a general understanding of the proposed development and to show the location of the proposed development within the project area.
2. The dimensions of the PROVISIONAL SECTION are not intended to be used as a basis for the final development plan. The final development plan must be approved in accordance with Section 1.3.3.3 of the Zoning Regulations.
3. Approval of the PROVISIONAL SECTION is not based on any engineering plans. However, it is intended to establish the final location, height, and density of the development. The final development plan must be approved in accordance with Section 1.3.3.3 of the Zoning Regulations.
4. At the time of building permit applications, the PROVISIONAL SECTION of this development plan must be updated to comply with all aspects of the zoning regulations required by Section 1.3.3.3 of the Zoning Regulations.



OFFICE OF PLANNING & ZONING  
APPROVED BY: [Signature]  
DATE: 4/17/76  
DIRECTOR OF PLANNING  
[Signature]  
DATE: 4/17/76  
ZONING COMMISSIONER



ENGINEER: [Signature]  
DATE: 4/17/76  
BALTIMORE, MD 21201  
PHONE: 835-7608

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